Sinniah a/l Pampayan v Muthuvelu Pillai a/l Palanichamy Pillai

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO A-02-233 OF 1994
VC GEORGE, ABU MANSOR JJCA AND KC VOHRAH J
27 JANUARY 1996

***Contract** — Sale and purchase of land — Contingent contract — Vendor only had contingent right to own the land in future — Whether vendor could validly pass title to purchaser once land was transferred to vendor — Whether vendor could sell right to own land in future — Whether on the facts, vendor had merely sold right to own the land — Whether parties had mistakenly believed that land belonged to the vendor — Whether agreement was against public policy — Whether contract was void under the Contracts Act 1950 — Contracts Act 1950 ss 21 & 24(e)*

The respondent ('the plaintiff') entered into an agreement ('the first agreement') with the State Government of Perak ('the state government') in March 1970 in respect of a house ('the premises'). The plaintiff agreed to buy the premises for RM3,039.70 within 17 years from the date of sale and to pay monthly instalments in accordance with the amount that was to be fixed by the state government from time to time. The plaintiff also agreed not to allow any person apart for himself and his family to occupy the premises without the permission of the state government or to sell, transfer, charge or release the premises. It was also provided that if there should be any breach of the contract by the plaintiff, the state government was entitled to terminate the agreement after one month's notice to him. The plaintiff gave a valid power of attorney to the appellant ('the first defendant') to sell the premises. The first defendant effected the sale of the premises to the second defendant under a written agreement ('the second agreement'). The second agreement provided that the purchaser shall pay the balance payment of the premises to the state government by monthly instalments. The second defendant was allowed to occupy the premises. The judicial commissioner held that the second agreement was void, firstly, under s 21 of the Contracts Act 1950 ('the Act') because the sale was founded on the mistaken belief that the premises belonged to the plaintiff whereas the premises belonged to the state government; and secondly, under s 24(e) of the Act because the sale was opposed to public policy. The first defendant appealed.

Held, allowing the appeal:

(1) It was against the weight of evidence to take the view that the plaintiff was under a mistaken belief that he owned the premises. From the facts, it was clear that the plaintiff and the second defendant were aware that what was being bought was a future right on the part of the plaintiff to own the premises. It was also clear that the plaintiff could not and in effect did not sell the

premises to the second defendant. All that was sold was a right arising under the first agreement to purchase and own the premises in the future provided certain conditions were fulfilled. The issue of mistake, whether mutual or unilateral, did not arise at all (see p 407B–D).

(2) It was clear that the plaintiff could sell — and in fact, did sell — the right to own the premises in the future albeit contingent on certain conditions. The plaintiff could validly pass title to the second defendant once the premises was transferred to himself by the state government (see pp 401I and 408A); *Kersah La'usin v Sikin* [1966] 2 MLJ 20 and *Brickles v Snell* [1916] AC 599 followed.

(3) There was no evidence that the state government did not allow such arrangement as was made between the plaintiff and the second defendant, and in any event there was no evidence that the state government had sent a notice to the plaintiff terminating the first agreement on that account or for any other reason (see p 408E–F).

[Bahasa Malaysia summary

Penentang ('plaintif') telah mengikat suatu perjanjian ('perjanjian pertama') dengan Kerajaan Negeri Perak ('kerajaan negeri') dalam bulan Mac 1970 berhubung dengan sebuah rumah ('premis tersebut'). Plaintif bersetuju untuk membeli premis tersebut pada harga RM3,039.70 dalam masa 17 tahun dari tarikh jualan dan untuk membayar ansuran bulanan mengikut jumlah yang ditetapkan oleh kerajaan negeri dari masa ke semasa. Plaintif juga bersetuju untuk tidak membenarkan sesiapa selain daripada diri sendiri dan keluarganya untuk menetap di premis tersebut tanpa kebenaran kerajaan negeri atau untuk menjual, memindah hakmilik, menggadai atau melepaskan premis tersebut. Adalah juga diperuntukkan bahawa sekiranya berlaku apa-apa kemungkiran kontrak oleh plaintif, kerajaan negeri berhak untuk menamatkan perjanjian tersebut selepas memberi notis sebulan kepada plaintif. Plaintif memberikan surat kuasa wakil yang sah kepada perayu ('defendan pertama') untuk menjual premis tersebut. Defendan pertama melaksanakan jualan premis tersebut kepada defendan kedua di bawah suatu perjanjian bertulis ('perjanjian kedua'). Perjanjian kedua memperuntukkan bahawa pembeli hendaklah membayar baki bayaran premis tersebut kepada kerajaan negeri secara ansuran bulanan. Defendan kedua dibenarkan menetap di premis tersebut. Pesuruhjaya kehakiman memutuskan bahawa perjanjian kedua adalah terbatal, pertamanya, di bawah s 21 Akta Kontrak 1950 ('Akta tersebut') kerana jualan itu berasaskan kepercayaan tersilap bahawa premis tersebut adalah kepunyaan plaintiff sedangkan premis tersebut adalah kepunyaan kerajaan negeri; dan keduanya, di bawah s 24(e) Akta tersebut sebab jualan itu adalah bertentangan dengan polisi awam. Defendan pertama membuat rayuan.

Diputuskan, membenarkan rayuan:

(1) Adalah bertentangan dengan sokongan keterangan untuk mengambil pandangan bahawa plaintif adalah di bawah kepercayaan tersilap bahawa beliau memiliki premis tersebut. Daripada fakta-fakta, adalah jelas bahawa plaintif dan defendan kedua sedar bahawa yang dibeli adalah hak masa depan pada pihak plaintif untuk memiliki premis tersebut. Ianya juga jelas bahawa plaintif tidak boleh dan sebenarnya tidak menjual premis tersebut kepada defendan kedua. Apa yang dijual hanyalah suatu hak yang timbul daripada perjanjian pertama untuk membeli dan memiliki premis tersebut di masa hadapan dengan syarat beberapa syarat tertentu dipenuhi. Isu silap, sama ada secara bersama atau satu pihak, tidak timbul sama sekali (lihat ms 407B–D).

(2) Adalah jelas bahawa plaintif boleh menjual — dan pada hakikatnya, sesungguhnya telah menjual — hak untuk memiliki premis tersebut di masa depan walaupun bergantung kepada syarat tertentu. Plaintif boleh dengan sahnya memindah hakmilik kepada defendan kedua sebaik sahaja premis tersebut dipindahmilik kepadanya oleh kerajaan negeri (lihat ms 401I dan 408A); *Kersah La'usin v Sikin* [1966] 2 MLJ 20 dan *Brickles v Snell* [1916] AC 599 diikut.

(3) Tidak ada bukti bahawa kerajaan negeri tidak membenarkan apa yang telah diaturkan antara plaintif dan defendan kedua, dan dalam apa-apa keadaan pun tidak ada bukti bahawa kerajaan negeri telah menghantar notis kepada plaintif menamatkan perjanjian pertama atas sebab itu atau atas apa-apa sebab lain (lihat ms 408E–F).]

Notes

For cases on contingent contracts and sale and purchase of land, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1432 and 2063–2136 respectively.

Cases referred to

Brickles v Snell [1916] AC 599 (folld)
Chop Ngoh Seng v Esmail & Ahmad Bros [1948–49] MLJ Supp 93 (refd)
Hamzah bin Musa v Fatimah Zaharah bte Mohamed Jalal [1982] 1 MLJ 361 (refd)
Kersah La'usin v Sikin [1966] 2 MLJ 20 (folld)
Robin & Anor v Goh Boon Chow [1965] 2 MLJ 215 (refd)

Legislation referred to

Contracts Act 1950 ss 21, 24(e)
National Land Code 1965 ss 120, 121, 122

Appeal from: Civil Suit No 53 of 1984 (High Court, Ipoh)

Porres P Royan (*NP Ramachandran & Associates*) for the appellants. A
Minderjit Kaur (*Minderjit & Co*) for the respondent.

KC Vohrah J (delivering the judgment of the court): We allowed the appeal in this case and now elaborate on the reasons for doing so.

It was not disputed that there was a written agreement entered into B between the respondent ('the plaintiff') and the State Government of Perak ('the state government') on 4 March 1970 in respect of house No 43, Pokok Assam ('the premises') under the 'Rancangan Rumah Semua Kaum'. Under the agreement, it was stated that subject to several terms and conditions, the state government was desirous of leasing the premises to the plaintiff and the plaintiff intended to own the premises. The plaintiff C agreed to buy the premises for RM3,039.70 within 17 years from the date of sale and to pay monthly instalments in accordance with the amount that was to be fixed by the state government from time to time. The plaintiff also agreed not to allow any person apart for himself and his family to occupy the premises without the permission of the state government or to D sell, transfer, charge or release the said premises.

Another term in the agreement provides that if there should be any breach of the contract by the plaintiff, the state government was entitled to terminate the agreement after one month's notice to him.

It is to be noted that the conditions relating to the occupation, E transfer, charge or release of the premises are contained in a contract and are not conditions imposed under the provisions of the National Land Code 1965 ('the Code'). But of course the conditions affect the plaintiff during the subsistence of the agreement and do not continue beyond the agreement to affect the premises after it has been transferred to the plaintiff unless such conditions are conditions and restrictions in interest F in the issue document of title affecting the premises under ss 120 to 122 of the Code. The point to note is that it is not the issue document of title which was relevant at the trial, but the terms of the agreement which endure only during the subsistence of the agreement.

We now turn to another aspect of the case. The learned judicial G commissioner before whom the trial was held found as a fact that the plaintiff had given a valid power of attorney to the appellant ('the first defendant') to sell the premises and that the first defendant, acting under the power of sale, had effected the sale of the premises to Palanisamy a/l Pampayan ('the second defendant') under a written agreement and that the plaintiff had failed to prove beyond reasonable doubt that the sale was H fraudulent. We see no reason to disturb these findings of facts.

The learned judicial commissioner also held that this written agreement was void on two grounds, firstly, because the purported sale was founded on the mistaken belief that the premises belonged to the plaintiff whereas the premises belonged to the state government and I secondly, because the sale was opposed to public policy.

As regards the first ground, the learned judicial commissioner was of the view that the language of the agreement (between the plaintiff and the

second defendant) was clear to show that the purported sale was founded on the mistaken belief by both parties that the premises belonged to the plaintiff and was therefore void under s 21 of the Contracts Act 1950 ('the Act'). He relied on *Chop Ngoh Seng v Esmail & Ahmad Bros* [1948–49] MLJ Supp 93; *Robin & Anor v Goh Boon Chow* [1965] 2 MLJ 215 for such view. There was nothing, however, in the agreement between the state government and the plaintiff to say that the plaintiff owned the premises. It is against the weight of evidence to take the view that the plaintiff was under a mistaken belief that he owned the premises. He could not have been mistaken as he was a party to that agreement. And that same agreement was handed over to the second defendant as is acknowledged in the agreement between the second defendant and the plaintiff. All that was sold, as will be shown later, is a right, arising under the agreement made between the plaintiff and the state government, to purchase and own the premises in the future provided certain conditions were fulfilled. The issue of mistake whether mutual or unilateral does not at all arise.

The learned judicial commissioner was also of the view that the agreement is void under under s 24(e) of the Act as being against public policy. He was of the view that the policy of the state government was to provide housing for the poor and that was why the agreement restricted the plaintiff from selling, transferring, charging or releasing the premises to another person; the sale by the plaintiff to the second defendant of the premises contravened s 24(e) of the Act as it was injurious to good government in the field of domestic affairs and its object was economically against the public interest, relying on *Hamzah bin Musa v Fatimah Zaharah bte Mohamed Jalal* [1982] 1 MLJ 361.

With respect, no such issue of the sale being void properly arises. It is clear that the plaintiff could not and in effect did not sell the premises to the second defendant. Under the agreement he had with the state government, the plaintiff's right to own the premises was in the future. The purchase price was fixed and he had to complete the payment of the price within 17 years from the date of the signing of the agreement. And the payment of the monthly instalments was towards the purchase price. What the plaintiff in fact had was a contingent right to own the premises, a right to own the premises in the future provided he paid the monthly instalments and provided the purchase price was paid within 17 years. And one has to remember the other proviso in the agreement which provides that the agreement could be terminated by the government by the giving of one month's notice, for breach of the agreement by the plaintiff.

The agreement entered into between the plaintiff through the first defendant as his attorney and the second defendant was in respect of this right to own the premises in the future, a contingent right. The agreement between the plaintiff and the state government, it will be noted, does not contain a provision purporting to impose conditions on the premises once it is transferred to him. The agreement as has been noted earlier, is nothing more than an ordinary contract. It is clear that the plaintiff could sell and in fact, merely sold this right to own the premises in the future albeit contingent on the three conditions earlier stated. The plaintiff could

validly pass title to the second defendant once the premises was transferred to himself by the state government provided that the issue document contains no conditions or restrictions, but that is not in issue in this case.

The opinion of Raja Azlan Shah J (as His Royal Highness then was) in *Kersah La'usin v Sikin* [1966] 2 MLJ 20 at p 23 (where the Privy Council case of *Brickles v Snell* [1916] AC 599 was relied upon) succinctly states the relevant law thus:

> Actual possession of both the legal estate and any equitable rights are not prerequisites so long as the vendor is in such a position that when the time for completion comes he will be in a position to pass the title to the purchaser. In these circumstances the contract is good but only in equity.

We had observed earlier that the plaintiff and the second defendant were aware that what was being bought was a future right on the part of the plaintiff to own the premises. In connection with this, there was also this provision in the agreement between them which reads:

> It is hereby agreed that the purchaser ... shall pay the balance payment of the said premises to the state government by monthly instalments and obtain receipts in the name of the original owner who has agreed to transfer the title of the said premises to the purchaser on completion of payment for the said premises.

Clearly, it must have been with this mind that the second defendant was allowed to occupy the premises, but there is no evidence that the state government did not allow such an arrangement and in any event there is no evidence that the state government had sent a notice to the plaintiff terminating the agreement between the plaintiff and the state government on account of that or for any other reason. We therefore cannot agree with the finding of the learned judicial commissioner that the agreement made between the plaintiff and the second defendant is void.

We thus allowed the appeal of the first defendant with costs here and below and set aside the order of vacant possession. Although the learned judicial commissioner in his grounds of decision had stated that he did not order mense profits, the notes of proceedings show that he gave judgment to the plaintiff without reservation and the order under the hand of the senior assistant registrar shows it as being incorporated in the sealed order. The order for mense profits was also therefore set aside.

Appeal allowed.

Reported by Jafisah Jaafar